United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	**Docket No. 16-0787**
	)	**Issued: June 28, 2016**
DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION, Albuquerque, NM, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 9, 2016 appellant filed a timely appeal from a January 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's claim for a work-related injury because it was untimely filed.

FACTUAL HISTORY

On October 14, 2015 appellant, then a 46-year-old federal agent nuclear materials courier, filed an occupational disease claim (Form CA-2) alleging that he sustained progressive

[1] 5 U.S.C. § 8101 *et seq.*

idiopathic ataxic syndrome due to a January 18, 2011 vehicular accident at work for which he had previously filed a claim.[2] He also claimed that, as a consequence of the progressive idiopathic ataxic syndrome, he fell at work on June 4, 2012 and injured his left wrist and forearm.[3] Appellant noted on the claim form that he first became aware of his claimed condition on April 15, 2011 and that he first realized on April 15, 2011 that it was caused or aggravated by his employment. On the same claim form, appellant's immediate supervisor indicated that appellant first reported his claimed injury to her on April 15, 2011.[4]

In a November 4, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim that he sustained progressive idiopathic ataxic syndrome due to the January 18, 2011 vehicular accident. On November 4, 2015 it also requested that the employing establishment provide additional information regarding appellant's claim, including any comments from a knowledgeable supervisor on the accuracy of the statements provided by appellant regarding the claimed injury.

Appellant submitted medical evidence in support of his claim, including an October 1, 2013 report in which Dr. Amanda Deligtisch, an attending Board-certified neurologist, noted that appellant had reported an almost three-year history of subtle progressive balance difficulty and speech difficulty.[5] In a report dated August 27, 2015, Dr. Christopher M. Gomez, an attending Board-certified neurologist, noted that appellant reported being healthy until January 2011 when he was involved in a rollover vehicular accident in which he bumped his head. He indicated that in approximately April 2012 appellant's wife reportedly began to notice changes in appellant's speech with some slurring, a condition which worsened thereafter. Appellant reported that by April 2012 he began falling on a regular basis when engaging in the running exercises required by his job and that in June 2012 he fell and fractured his left wrist. On October 2, 2015

[2] On January 19, 2011 appellant filed a traumatic injury claim (Form CA-1) under a separate claim file alleging that he sustained injury to his head, left shoulder, and left ring finger in a vehicular accident at work on January 18, 2011. OWCP accepted the occurrence of the January 18, 2011 work-related accident, but found that appellant did not submit medical evidence establishing a specific medical condition due to the work incident (OWCP File No. xxxxxx578).

[3] On June 4, 2012 appellant filed a traumatic injury claim (Form CA-1) under a separate claim file alleging that he sustained injury to his left wrist and forearm due to a fall which occurred while exercising on stairs at work on June 4, 2012. OWCP accepted that appellant sustained closed distal radius and scaphoid fractures of his left wrist, post-traumatic arthritis of his left wrist, and traumatic arthropathy of his left forearm. On June 14, 2012 appellant underwent OWCP-authorized internal fixation surgery of the distal radius and scaphoid fractures of his left wrist (OWCP File No. xxxxxx067).

[4] Appellant's immediate supervisor indicated that appellant stopped work on June 4, 2012 and returned to work on July 2, 2012. The Board notes that, although appellant filed a claim for an occupational disease, his claim would be best characterized as a claim for a traumatic injury as his claimed progressive idiopathic ataxic syndrome condition was alleged to have been caused by events occurring in a single workday, *i.e.*, the vehicular accident that occurred on January 18, 2011. Under FECA, a traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 351 (1992).

[5] Dr. Deligtisch also produced reports in 2014 and 2015 which noted that appellant provided a similar medical history.

Dr. Gomez diagnosed hereditary spinocerebellar ataxia and postconcussive syndrome related to the January 2011 vehicular accident. He indicated that head trauma was a severe risk factor in exacerbating underlying spinocerebellar ataxia.[6]

The employing establishment submitted a position description for appellant's work as a federal agent nuclear materials courier and a January 18, 2011 police report of his vehicular accident on that date which showed that the vehicle in which he was a passenger had rolled over.

In a January 26, 2016 decision, OWCP denied appellant's claim for a work-related injury because it was untimely filed. Regarding the basis for the denial, it indicated:

> "Your case is denied because the evidence does not support a finding that your claim was filed within three years of the date of injury or that your immediate supervisor had actual knowledge within 30 days of the date of injury. The date of your injury is April 15, 2011. The claim for compensation was filed on October 14, 2015."

LEGAL PRECEDENT

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.[7] In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

> "(1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death; or
>
> "(2) written notice of injury or death as specified in section 8119 was given within 30 days."[8]

Section 8119 of FECA provides that a notice of injury or death shall be given within 30 days after the injury or death, be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed, be in writing, state the name and address of the employee, state the year, month, day and hour when and the particular locality where the injury or death occurred, state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause, and be signed by and contain the

[6] Dr. Gomez noted that appellant's ataxia was mild, that he had preserved cognitive function but had mild incoordination. Appellant also submitted a January 7, 2013 report noting left wrist surgery in June 2012.

[7] *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

[8] 5 U.S.C. § 8122(a).

address of the individual giving the notice.[9] Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.[10]

When a traumatic injury definite in time, place, and circumstances is involved, the time for giving notice of injury and filing for compensation begins to run at the time of the incident, even though the employee may not have been aware of the precise nature, seriousness, or ultimate consequences of his or her injury.[11] The Board has found that the statute of limitations begins to run on the date that the employee actually knows of the *possible relationship* between the employee's condition and his or her employment, or reasonably should have known of the *possible relationship*.[12]

ANALYSIS

On October 14, 2015 appellant filed a claim alleging that he sustained progressive idiopathic ataxic syndrome due to a January 18, 2011 vehicular accident at work. The Board finds that the evidence establishes that appellant was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between his employment and the compensable disability as early as April 15, 2011. Appellant indicated on his October 14, 2015 claim form that he first became aware of his claimed ataxia condition on April 15, 2011 and that he first realized on April 15, 2011 that it was caused or aggravated by his employment. His explicit linking of the above-noted January 18, 2011 work-related accident with his development of progressive idiopathic ataxic syndrome shows that he knew as early as April 15, 2011 of the possible relationship between them. The Board's finding that appellant was aware as early as April 15, 2011 of the possible relationship between his claimed progressive idiopathic ataxic syndrome and the January 18, 2011 vehicular accident at work is supported by the medical evidence of record. In a report dated August 27, 2015, Dr. Gomez noted that appellant reported being healthy until January 2011 when he was involved in a rollover vehicular accident in which he bumped his head. He indicated that appellant reported that in approximately April 2012 he began to have changes in his speech with some slurring and that by April 2012 he began falling on a regular basis.

Appellant did not file his claim for an employment-related emotional condition until October 14, 2015 and therefore he did not file his claim within the requisite three years of his awareness of the possible relationship between the implicated employment incident, the January 18, 2011 vehicular accident, and the claimed medical condition, progressive idiopathic ataxic syndrome.[13]

[9] *Id*. at § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

[10] *Laura L. Harrison*, 52 ECAB 515 (2001).

[11] *Delmont L. Thompson*, 51 ECAB 155 (1999); *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

[12] *William A. West*, 36 ECAB 525, 528-29 (1985).

[13] *See supra* notes 8, 11, and 12.

However, appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate superior had actual knowledge of the injury within 30 days or under section 8122(a)(2) if written notice of injury was given to his immediate superior within 30 days as specified in section 8119.[14]

The Board notes that there is some evidence of record that appellant's immediate supervisor had knowledge of appellant's claimed injury at the time he was aware of the possible connection between the condition and work factors. On the claim form submitted on October 14, 2015, appellant's immediate supervisor indicated that appellant first reported his claimed injury to her on April 15, 2011.[15]

Under FECA, although it is the burden of an employee to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[16]

Therefore, the case shall be remanded to OWCP for further development regarding the knowledge of appellant's immediate supervisor with respect to appellant's claim that he became aware in April 2011 that he had sustained an ataxia condition due to the January 18, 2011 work-related vehicular accident. After carrying out this development, OWCP shall issue a *de novo* decision regarding appellant's claim for a work-related injury.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether OWCP properly denied appellant's claim for a work-related injury because it was untimely filed.

[14] *See supra* note 8.

[15] This possible knowledge by the supervisor would be within 30 days because, although appellant implicated a January 18, 2011 work-related accident, he did not realize until April 15, 2011 that he had sustained an ataxia condition due to that accident. *See supra* notes 11 and 12.

[16] *Willie A. Dean*, 40 ECAB 1208, 1212 (1989). On November 4, 2015 OWCP requested that the employing establishment provide additional information regarding appellant's claim, including any comments from a knowledgeable supervisor on the accuracy of the statements provided by appellant regarding the claimed injury. However, the employing establishment did not submit such comments.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 28, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board